IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1762 OF 2004

Shailesh N. Shah
Prop. Lotus Corporation ..Petitioner.

Vs.

The Municipal Corporation
of Greater Mumbai & Ors. ..Respondents.

...

Mr. G.V. Murti for the Petitioner.
Mrs. A.R. Joshi for the BMC.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

25th January, 2005.

P.C. :

1. The Executive Engineer (Transport) in charge of the Eastern Suburbs of the Mumbai Municipal Corporation invited tenders on 11th February, 2004 for the supply of one truck every day for providing maintenance services in the M/East, M/West, N, L, S and T Wards of the Corporation. The period of the

contract was to be six months. The Petitioner submitted a tender and on 21st February, 2004, the Fourth Respondent awarded the contract to the Petitioner for five wards viz. M/East, M/West, N, S and T Wards. After the receipt of the work orders, the Petitioner claims to have commenced supplying trucks to the Municipal Corporation in terms of the contract. On 7th June, 2004 a communication was received by the Petitioner from the Municipal Corporation informing him that the work under the contract had been discontinued with effect from 11th June, 2004. According to the Petitioner upon making enquiries he was informed that the Third Respondent - the Additional Municipal Commissioner (City) had on a report put up by the Accounts Department passed an order for the termination of the contract of the Petitioner on the ground that it should be awarded to the lowest tenderer of the said tender, and not to the Petitioner whose bid was not the lowest. According to the Petitioner when the bids were being scrutinized a party by the name of Sainath Enterprises had lodged a complaint to the Fourth Respondent alleging certain malpractices by (i) Sunrays Enterprises; (ii) Anushuman & Company;

(iii) Lotus Corporation and (iv) Ladhani Medicals. It was alleged therein that Sunrays Enterprises and Anushuman & Company had a common proprietor and a common PAN card despite which they had submitted two separate bids. The same allegation was made against the Petitioner and Ladhani Medicals. In paragraph 12 of the Petition it was pleaded that on making enquiries the Respondent found that Sunrays Enterprises and Anushuman & Company did have a common proprietor and a common PAN card and the same person appears to have signed for two different firms, consequent upon which these two firms have been disqualified for the award of the contract. However, according to the Petitioner, the complaint in so far as Lotus Corporation (which is a proprietary concern of the Petitioner) and Ladhani Medicals is concerned, the complaint was found not to be substantiated on enquiry by the Municipal Corporation. According to the Petitioner his quotation was the second lowest in L and N Wards and third lowest in M/East, M/West, S and T Wards. The lowest quotation in all the Wards was that of M/s. Anushuman & Company. The second lowest in M/West Ward was that of M/s. Sanath Roadways, while the second lowest quotation in S

and T Wards was that of M/s. Durga Transport. According to the Petitioner, in so far as L/Ward was concerned, since Sunrays Enterprises, the proprietor of which firm was the same as the proprietor of Anushuman & Company, had not quoted for the L/Ward, the quotation of Anushuman & Company was found valid and responsive and the contract of L/Ward was awarded to the said firm. Since both Sunrays and Anushuman & Company had quoted for all the remaining wards and the quotation was contrary to the mandatory condition 19(A) to (D) of the said tender, these quotations were treated as non-responsive since the two firms have a common proprietor. Hence, according to the Petitioner his quotation being the second lowest for N/Ward, the contract was awarded to him. In case of S and T Wards, Durga Transport had not submitted the EMD along with the tender and hence the tender was rejected. In case of M/East Ward the quotation of Deepak Construction was the second lowest, but again that bid was rejected for failure to submit the EMD. Since Anushuman & Company who are the lowest in all the Wards had to be disqualified by virtue of Condition 19 and since the second lowest bidders in the remaining wards

had not furnished the requisite EMD, the quotation of the Petitioner for all the Wards excepting L/Ward is stated to have been the lowest quotation and hence, according to the Petitioner the contract was correctly awarded to him.

2. When this Petition was placed for admission, on 10th June, 2004 the following order was passed by a learned Single Judge of this Court :

> "1. That the Petitioner's tender was accepted is not disputed. The rate tendered by the Petitioner was Rs.1995/- per day.
>
> 2. It is further admitted that the lowest tender of Rs.1770/- per day was rejected because a material term of the contract viz. deposit of earnest money was not complied with by him. The lowest tender was also rejected because he had filed two separate tenders for two different names under the same PAN number. Prima-facie, it appears that the lowest tender was therefore, rightly rejected.
>
> 3. The only reason for terminating the

Petitioner's contract is that the auditors had taken an objection to the same on the ground that the lowest tender had committed only a "minor" error whilst submitting his

tender. Prima-facie it appears that the termination is illegal.

4. In the circumstances, ad interim order in terms of prayers (c) and (d).

5. S.O. to 28th June, 2004."

3. On 11th August, 2004 the Petition was admitted and the ad interim order which was granted earlier was confirmed till the disposal of the Petition. As a result of the order in terms of prayer clauses (c) and (d), the Municipal Corporation was restrained from giving effect to or cancelling or terminating the contracts awarded to the Petitioner and from in any manner awarding the contracts for the said wards to any other person. This Petition was mentioned before the Court by the counsel for the Municipal Corporation and it was submitted that after the ad interim order passed by

the Court on 10th June, 2004, the period of the contract of the Petitioner has expired. However, as a result of the interim relief in terms of prayer clause (d), the Municipal Corporation is precluded from awarding contracts for the aforesaid wards afresh upon the expiry of the term of the

contract of the Petitioner. In the circumstances, this Petition was listed for hearing and final disposal. Since the period of the contract that was initially awarded to the Petitioner has now expired, it is only appropriate and proper that the Municipal Corporation should be granted liberty to take necessary steps in accordance with law for making arrangements as it may deem fit and proper for the work which forms the subject matter of the contracts in question. The Municipal Corporation shall accordingly be at liberty to do so. In so far as the work which has been allotted to the Petitioner in pursuance of the interim directions of this Court is concerned, the Municipal Corporation shall now proceed to process the bills submitted by the Petitioner and after due verification of the work which has been done take

necessary steps in accordance with law expeditiously. Since nothing further survives in the Petition, the Petition shall stand accordingly disposed of. No order as to costs.